

E-Filed 3/12/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ARTHUR G. MAIONCHI, et al.,
Plaintiffs,
v.
SAFETY-KLEEN SERVICES, INC., et al.,
Defendants.

Case Number C 03-647 JF (PVT)
ORDER¹ DENYING DEFENDANT
UNION PACIFIC CORPORATION'S
MOTION FOR CERTIFICATION FOR
INTERLOCUTORY APPEAL
[re: doc. no. 79]

Following remand of this action from the Court of Appeals, an issue arose regarding the scope of the litigation. Defendant Union Pacific Corporation ("Defendant") argued on remand that it may assert that Plaintiffs committed a knowing and intentional or willful misrepresentation or breach sufficient to relieve Union Pacific of its indemnification obligations under the Merger Agreement. Plaintiffs took the position that any such argument is precluded by the appellate decision.

On November 8, 2006, this Court issued an Order Re Scope of Litigation On Remand, concluding that Defendant may *not* assert affirmative defenses based upon Plaintiffs' alleged misrepresentation or breach, and that the scope of the litigation on remand is limited to a

¹ This disposition is not designated for publication and may not be cited.

1 determination of Plaintiffs' damages and the terms of declaratory relief.

2 Defendant Union Pacific subsequently filed a motion for leave to file a motion for
3 reconsideration or, in the alternative, for an order certifying the scope of the litigation for
4 interlocutory appeal. This Court denied Defendant's motion for leave to file a motion for
5 reconsideration, and requested briefing on the issue of certification for interlocutory appeal.
6 Plaintiffs' brief addressing the latter issue was filed January 5, 2007. The matter thereafter was
7 taken under submission without oral argument.

8 The motion is DENIED. As this Court previously concluded, it appears from the
9 appellate decision that the Ninth Circuit must have found that Defendant made a judicial
10 admission that it was not asserting misrepresentation or breach. If it did not intend to make such
11 a finding, the Ninth Circuit could have clarified its decision on the petition for rehearing. This
12 ruling is without prejudice to whatever application Defendant may wish to make to the Ninth
13 Circuit directly.

14 IT IS SO ORDERED.

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16 DATED: 3/12/07

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19 JEREMY FOGEL
20 United States District Judge
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1 Copies of Order served upon the following persons:

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